APR 1 1976

No. 75-1395

In the

Supreme Court of the United States

OCTOBER TERM, 1975

ANDREW HEAD,

Petitioner,

vs.

MARSHALL KORSHAK, Director of Department of Revenue, City of Chicago, Illinois, and JOHN C. MARCIN, City Clerk, City of Chicago,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS AND APPENDIX

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Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

Petitioner prays that a Writ of Certiorari issue to review the Order of the Supreme Court of Illinois entered January 20, 1976.

OPINIONS BELOW

The opinion and order of the Supreme Court of Illinois with respect to which review is sought is reported at 62 Ill. 2d 226, 341 N.E. 2d 706. It is printed in the Appendix hereto at A2-A5. The order of the Circuit Court of Cook County, Illinois from which appeal was taken and which was affirmed by the order of the Supreme Court of Illinois is not reported. It is also printed in the Appendix hereto at A1-A2.

JURISDICTION

Jurisdiction is based on 28 U.S.C., Section 1257(3). The order sought to be reviewed was entered January 20, 1976.

QUESTIONS PRESENTED

1. Whether it is arbitrary and unreasonable for a vehicle license tax, differentiating motor vehicles into three separate classes based upon horsepower of respective vehicles (with equalized license fees proportional to the relative horsepower of all the vehicles in the three classes), to be amended to provide that individuals 65 years of age or older, who own vehicles of 55 horsepower or more shall pay the full equalized license tax fee, when individuals of the same age owning vehicles falling into classes based upon lesser horsepower pay only 50 percent of the full equalized fee for such classes of vehicles.

2. Whether a 50 percent reduction in the equalized vehicle license tax fee given to "senior citizens" may be denied to the class of "senior citizens" owning vehicles of 55 horsepower or more where the relative fees charged to both non-"senior citizens" and all other "senior citizens" are in a direct ratio between horsepower and license fee charged.

3. Whether a vehicle license or wheel tax ordinance, which is unrelated to either the value of the vehicle, the economic status of the taxpayer, or the relative burden on the roads, highways, and environment contributed by the vehicle, is violative of rights protected by the due process and equal protection clauses of the Fourteenth Amendment.

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STATUTES INVOLVED

CHICAGO, ILLINOIS, Chapter 29, Sec. 5 (1974) (Municipal Code of Chicago)

> Annual license fees for motor vehicles, trucks and trailers of various classifications shall be as follows: except that in the case of Class X and Class U, other than ambulances and hearses, persons sixty-five (65) years of age and older shall, upon satisfactory proof of age, be charged fifty (50) percent less than the stated fee:

Class	Type of Vehicle	Annual License Fee
X	Passenger automobiles, including ambulances and hearses of thirty-five (35) horsepower or less	$20.00
U	Passenger automobiles, including ambulances, and hearses of more than thirty-five (35) but less than fifty-five (55) horsepower	$35.00
W	Passenger automobiles, including ambulances and hearses of fifty-five (55) horsepower or more	$50.00

CONSTITUTIONAL PROVISIONS
U.S. CONST., Amend. XIV § 1

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

Petitioner, a resident of the City of Chicago, Illinois, and owner of a 1969 Cadillac passenger automobile, which automobile is classified pursuant to Section 29.5 of the Wheel Tax License Ordinance as a Class W automobile to-wit: of 55 horsepower or more, initiated a Complaint for Injunction against the Respondents, the Director of the Department of Revenue and City Clerk of the City of Chicago, seeking to enjoin the enforcement of the Chicago Wheel Tax License Ordinance and for declaration that said Ordinance was unconstitutional.

Said action was initiated on December 16, 1974 pursuant to a complaint filed by Petitioner in the Circuit Court of Cook County, Illinois, on behalf of Petitioner and all other residents of the City of Chicago, of 65 years of age and older owning passenger automobiles classified as Class W under said ordinance. The complaint charged that said ordinance was violative of certain constitutional provisions contained in the Illinois Constitution as well as the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution. Said complaint sought equitable relief and the segregation of any taxes collected from Petitioner and others similarly situated.

On January 6, 1975 Respondents filed a motion to dismiss said complaint.

On March 20, 1975 the Circuit Court of Cook County entered an order sustaining Respondents' motion and further denying Petitioner's motion for a temporary injunction. (A1-A2)

An appeal was taken from this order to the Supreme Court of Illinois which in its opinion of January 20,

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1976 affirmed the decision of the Circuit Court of Cook County. (A1-A2)

This petition follows in due course. The constitutional issues involved in this petition were raised at each step of the proceedings below.

REASONS FOR GRANTING THE WRIT

The constitutional rule established by the Supreme Court of Illinois in the present case runs contrary to the equal protection and due process clauses of the Fourteenth Amendment to the United States Constitution. The court adopted this position notwithstanding the well recognized principal enunciated by this Court that the validity of graduated vehicle license taxes is based upon a nexus between the respective license fee and the relative damage and destruction done to the highways by a particular automobile. *Hendrick* v. *Maryland*, 235 U.S. 610 (1915), *Bode* v. *Barrett*, 344 U.S. 583 (1952).

Petitioner submits that the ordinance in question violates the aforesaid constitutional provisions in that a person such as Petitioner, 65 years of age and older and owning a passenger automobile of 55 horsepower or more, is charged the full stated equalized annual license fee, while persons 65 years of age and older, and owning passenger vehicles falling into either of the lower classes of horsepower, are charged only 50 percent of the full stated equalized annual license fee, despite the fact that there is no reasonable relationship to the object of legislation or public policy for the aforsesaid discrimination.

When this Court first considered the constitutionality of a graduated vehicle license tax based upon relative horsepower ratings, it held such taxes to be valid because they were grossly proportional to the burden a respective vehicle created on roads and highways. As stated at page 622 of the Court's opinion in *Hendricks* v. *Maryland*, *supra:*

> "The movement of motor vehicles over the highways is attended by constant and serious dangers

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> to the public, and is also abnormally destructive to the ways themselves. Their success depends on good roads, the construction and maintenance of which are exceedingly expensive and in recent years insistent demands have been upon the states for better facilities especially by the ever-increasing number of those who own such vehicles. As is well known, in order to meet this demand and accommodate the growing traffic, the State of Maryland has built and is maintaining a system of improved roadways. Primarily for the enforcement of good order and the protection of those within its own jurisdiction the state put into effect the above described general regulations, including requirements for registration and licenses . . . And to this end it may require the registration of such vehicles and the licensing of their drivers, charging therefor reasonable fees graduated according to the horsepower of the engines,—a practical measure of size, speed and difficulty of control. . ."

Similarly in the case of *Bode* v. *Barrett, supra*, this Court affirmed a decision of the Supreme Court of Illinois in sustaining the validity of a tax imposed for use of highways based exclusively on gross weight of the vehicle in question because:

> "(n)o showing has been made by any of the Appellants that the tax bears no reasonable relation to the use he makes of the highways in his intrastate operations."

In fact the predecessor to the ordinance in question, which was identical in substance to that at bar except that it did not provide for the present inclusion of any senior citizen reduction, was sustained by the Illinois Supreme Court in the case of *Rozner* v. *Korshak*, 55 Ill. 2d 430 (1973), in which case the Illinois Supreme Court

relied heavily on this Court's opinion in the case of *Hendrick* v. *Maryland, supra.*

Petitioner concedes that there is a direct relationship between the horsepower of a particular vehicle and the burden created by such vehicle on the highways and the environment, such that an equalized or a graduated licensing tax system is constitutionally valid. We submit that the ordinance in question, prior to the amendment giving rise to the 50 percent reduction, validly reflected this relationship between horsepower and tax. The original Chicago Wheel Tax Ordinance (prior to the enactment of the senior citizen reduction) recognized the relationship betwen the relative sizes, speeds and difficulties of control between the automobiles falling in the X, U, and W classes, respectively. Under the prior ordinance, for example, an individual owning a class U vehicle (over 35 horsepower but less than 55 horsepower) paid $35.00 for his vehicle license, or 1-3/4 as much for a license to drive his vehicle as did an individual owning a vehicle falling into class X (less than 35 horsepower). This disparity in license fee between the two classes is merely reflective of the fact that the class U vehicle in effect is 1-3/4 more powerful than the class X vehicle and therefore proportionally contributes that much more damage to the roadway and environmental systems.

We submit that the effect of the ordinance as amended however is to irrationally and inequitably violate any ratio or nexus between the various classes of automobiles and their relative impact on either the highway and roadway system or the environment. Under the ordinance in question the various license fees between all individuals under the age of 65 are still in direct proportion to the ratios which we concede are constitutionally valid under

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this Court's decision in *Hendrick* v. *Maryland, supra.* Furthermore, the license fees charged individuals 65 years of age or over with respect to class X and class U vehicles are still in direct proportion to constitutionally reasonable ratios. *Only individuals 65 years of age or older and owning a vehicle falling in Class W pay a disproportionate share of the license tax burden under the ordinance.*

By way of illustration Petitioner asks that the Court take notice of a chart contained in the Appendix (A6) representing an analysis of license fees and horsepower under the ordinance in question. (This table was set forth in Petitioner's Brief filed before the Supreme Court of Illinois.) We submit that one can readily see from said table that an individual owning a class Y automobile, under the age of 65, pays 2-1/2 times as much for his vehicle license tax as does a comparable individual owning a class X vehicle (Chart 3-E), while individuals 65 years or older, such as Petitioner, pays 5 times as much as an individual of the same age owning a class X vehicle (Chart 3-F). Similarly an individual under the age of 65 owning a class W vehicle pays only 1.42 times as much as an individual the same age owning a class U vehicle (Chart 3-G), while an individual over the age of 65 and owning a class W vehicle, such as Petitioner, pays 2.86 times as much as a person the same age owning a class U vehicle (Chart 3-H). It is clear, therefore, that with respect to individuals 65 years or older and owning a class W vehicle, that the license tax fee paid by such an individual is not merely disproportionate to his share of the equalized tax burden but in fact is twice as much.

In essence Petitioner submits that he falls into two classes. He is both a senior citizen and the owner of a class W vehicle. As a senior citizen he is entitled to be

treated equally with all other senior citizens who drive automobiles in the City of Chicago. As the owner of a class W vehicle he is admittedly obligated to pay a proportionally higher license tax fee for his automobile than were he the owner of a class U or class X automobile. This is as a result of the equalization of the fees based upon the relative horsepowers of the vehicles falling in the respective classes. The instant ordinance as amended, however, combines these two classes and creates a subclass of automobile owners who are treated differently from others who are similarly situated, to-wit: senior citizens who own automobiles in the class W category. We submit that the creation of this subclass is without rational basis. The senior citizens' discount should be available to all senior citizens, independent of the rate schedule, which is based upon relative horsepower and which has already been proportionally equalized prior to the application of discount. The creation of this subclass is arbitrary and constitutionally inequitable.

The Supreme Court of Illinois in its opinion states:

> "The considerations advanced by the defendant to support the reasonableness of the exemption are, first, that persons of the age of 65 years and older who are able to afford to operate vehicles with large horsepower engines are less in need of tax relief than others, and second, that motor vehicles of 55 or more horsepower create greater environmental problems than do lower horsepower vehicles. These cannot be said to be unreasonable considerations, and in our opinion they justify the exemption granted by the ordinance." (A5)

In response thereto Petitioner submits that even were the relative values of the automobiles to be licensed a

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rational basis for affording a discount to owners of class U and class X cars, but not to those of class W, the Court may take judicial notice of the fact that there is no rational relationship between *solely the horsepower* of an automobile and its economic value. In the instant case Petitioner's automobile, although in excess of 55 horsepower, is over six years old and clearly is of substantially lesser value than an automobile of current vintage while of lesser horsepower. Accordingly the classification based upon relative economic values of automobiles might conceivably be valid, were the basis for classification even generally related to the relative values of the automobiles being licensed. A rating based solely on horsepower, however, and not taking into account either the age of the automobile, the original purchase price, or the present market value, for example, cannot in any fashion be said to be reflective of the owner's ability to afford the vehicle in question. With respect to the question of "greater environmental problems" contributed by cars of higher horsepower, we submit that this factor has already been taken into account by the equalization of the respective fees prior to the application of the fifty percent discount.

Petitioner submits that if the equal protection and due process clauses are to have any meaning than the subject ordinance as amended, at least to the extent that it discriminates against Petitioner and members of his subclass, must be declared invalid.

CONCLUSION

For the foregoing reasons it is urged that a Writ of Certiorari be granted to review the decision below.

Respectfully submitted,

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APPENDIX

PAGE

Circuit Court Order A1

Supreme Court Order A2

Chart A6

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APPENDIX

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

County Department, Chancery Division

ANDREW HEAD, etc.,

Plaintiff,

v. No. 74 CH 7983

MARSHALL KORSHAK, etc., et al.

Defendants.

ORDER

This cause coming on to be heard for disposition of all pending motions, the Court having heard arguments of counsel, and having had the within motions submitted to briefs, and having jurisdiction of the subject matter hereof and the parties hereto, IT IS HEREBY ORDERED:

1. The motion of Defendants pursuant to Section 48 of the Civil Practice Act is hereby granted and Plaintiff's Complaint is therefore hereby dismissed.

2. The motion of Plaintiff for temporary injunction and other relief is hereby denied.

3. This is a final and appealable order and there is no just cause for delay of enforcement or appeal thereof.

4. The Court further finds that this is a case of public importance and hereby certifies same for purposes of direct appeal to the Illinois Supreme Court.

AGREED AS TO FORM
/s/ L. Freedman
Attorney for Plaintiff

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Acting Corporation Counsel of the
City of Chicago
511 City Hall
Chicago, Illinois 60602

Enter: March 20, 1975
/s/ Francis J. Delany
Judge.

No. 47456

IN THE

SUPREME COURT OF ILLINOIS

September Term, A.D., 1975

ANDREW HEAD,

Plaintiff-Appellant,

v.

MARSHALL KORSHAK, Director of Department of Revenue, City of Chicago, Illinois and JOHN C. MARCIN, City Clerk of Chicago,

Defendants-Appellees.

OPINION

MR. JUSTICE SCHAEFFER delivered the opinion of the court:

In *Rozner* v. *Korshak*, (1973), 55 Ill.2d 430, the validity of the wheel tax ordinance of the City of Chicago was sustained against a constitutional attack upon grounds which included the charge that the division of passenger automobiles into three categories for taxing purposes was "unreasonable, arbitrary, and discriminatory, and violates the equal-protection clauses of the Fourteenth Amendment to the United States Constitution and Section 2 of Article 1 and Section 2 of Article IX of the Constitution of Illinois." 55 Ill.2d at 436.

In November of 1974 the taxing ordinance was amended by reducing the license fee for persons 65 years of age

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or older who own "class X" passenger automobiles (less than 35 horsepower) and "class U" passenger automobiles (more than 35 but less than 55 horsepower) by 50%. No reduction was made in the fee for persons 65 years of age or older who own "class W" passenger automobiles (55 horsepower or more).

In the case now before us, the plaintiff alleged that he is over 65 years of age and the owner of a "class W" automobile. He brought this action on behalf of himself and all persons similarly situated to enjoin the collection of the tax from them on the ground that the ordinance as amended is arbitrary and unreasonable and therefore unconstitutional. The circuit court denied the plaintiff's motion for a temporary injunction, and granted the defendant's motion to dismiss under Section 48 of the Civil Practice Act. The plaintiff appealed, and we brought the appeal directly to this court under Rule 302(b). Ill. Rev. Stat. 1973, Ch. 110A, par. 302(b).

The plaintiff concedes the constitutionality of the wheel tax ordinance as it existed before the amendment which granted reductions to persons over 65. He also concedes the authority of the City to grant reductions to persons over 65. (See *Doran* v. *Cullerton* (1972), 51 Ill.2d 553.) But he contends that as "a senior citizen he is entitled to be treated equally with all other senior citizens" and that as the owner of a "class W" vehicle he is improperly obligated to pay a proportionately higher license fee for his automobile than he would be required to pay if he were the owner of a smaller car. He says:

> "*** The instant ordinance as amended, however, combines these two classes and creates a sub-class of automobiles owners who are treated differently from others who are similarly situated, to wit: senior citizens who own automobiles in the Class W category. We submit that the creation of this sub-class is without rational basis. The senior citizen discount should be available to all senior citizens, independent of the

> rate schedule which is based upon relative horsepower and which has already been proportionately established prior to the application of the discount. The creation of this sub-class is arbitrary and constistitutionally inequitable."

Contrary to the plaintiff's contention, the 1974 amendment to the ordinance did not add another classication or subclassification; rather, it established an exemption, or a right to a deduction or credit. The distinction is that which is drawn in section 2 of article IX of the Constitution of 1970. That section is a new provision not heretofore found in the law of Illinois. It originated in the Style and Drafting Committee of the 1970 Constitutional Convention, and it was proposed as a substitute for a provision which would have authorized the General Assembly to classify nonproperty taxes and fees, but would also have required that the classes be reasonable and that the subjects and objects within each class be taxed uniformly. Section 2 provides:

> "In any law classifying the subjects or objects of non-property taxes or fees, the classes shall be reasonable and the subjects and objects within each class shall be taxed uniformly. Exemptions, deductions, credits, refunds and other allowances shall be reasonable."

The explanation of this new provision to the voters reads as follows:

> "This section is new. Under Section 1, the General Assembly has the power to place taxpayers or objects of taxation into groups for taxing purposes. It also has the power to make allowances and exemptions such as removing the sales taxes from food and medicine. It may provide credits against one form of tax for taxes paid in other forms." 7 Proceedings, Sixth Illinois Constitutional Convention 2735.

The constitutional determination to require that "exemptions, deductions, credits, refunds and other allowances"

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meet only a standard of reasonableness, and not a standard of uniformity and reasonableness seems clear. And in our opinion the classification of vehicles with respect to their ownership by persons 65 years or older is, in the language of section 2, an exemption, deduction, credit, or other allowance.

The considerations advanced by the defendant to support the reasonableness of the exemption are, first, that persons of the age of 65 years and older who are able to afford to operate vehicles with large horsepower engines are less in need of tax relief than others, and second, that motor vehicles of 55 or more horsepower create greater environmental problems than do lower horsepower vehicles. These can not be said to be unreasonable considerations, and in our opinion they justify the exemption granted by the ordinance. (See, *e.g.*, *People ex rel. Vermilion County Conservation District* v. *Lenover* (1969), 43 Ill.2d 209; *McRoberts* v. *Adams* (1975), 60 Ill.2d 458.) We hold, therefore, that it does not violate section 2 of article IX of the Constitution of Illinois. This conclusion is not altered by the circumstance that the ordinance has been amended subsequent to the submission of this case and now provides reduced fees for owners of "class W" vehicles who are 65 years of age or more.

The plaintiff's contentions under the equal protection clauses of the State and Federal constitutions are disposed of by what was said in *Titus* v. *Texas Co.* (1973), 55 Ill.2d 437, 442:

> "Under the decisions of the Supreme Court of the United States and this court, differential treatment for purposes of taxation can withstand constitutional attack so long as the classifications are reasonable. (*Lehnhausen* v. *Lake Shore Auto Parts Co.* (1973), 410 U.S. 356, 35 L.Ed. 2d 351, 93 S. Ct. 1001; *Thorpe* v. *Mahin* (1969), 43 Ill.2d 36, 45-46; see also Ill. Const. (1970) art. IX, sec. 2.)"

The judgment of the circuit court of Cook County is affirmed.

JUDGMENT AFFIRMED.

COMPARATIVE ANALYSIS OF LICENSE FEES BASED ON HORSEPOWER OF VEHICLE AND AGE OF OWNER

	Class	Horsepower	Licensing Fees For Individuals Under 65	Licensing Fees For Individuals 65 Or Over	Ratio Of Fees To Class X Fee For Individuals Under 65	Ratio Of Fees To Class X For Individuals 65 Or Over	Ratio Of Class W Fees To Class U Fees For Individuals Under 65	Ratio Of Class W Fees To Class U Fees For Individuals 65 Or Over
	A	B	C	D	E	F	G	H
1.	X	35 or under	$20.00	$10.00	1	1	—	—
2.	U	more than 35 and less than 55	$35.00	$17.50	1.75	1.75	1	1
3.	W	55 or under	$50.00	$50.00	2.50	5.00	1.42	2.86

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IN THE

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No. 75-1395

ANDREW HEAD,

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vs.

MARSHALL KORSHAK, Director of Department of Revenue, City of Chicago, Illinois, and JOHN C. MARCIN, City Clerk, City of Chicago, Illinois,

Respondents.

On Petition For Writ Of Certiorari To The Supreme Court Of Illinois

BRIEF OF RESPONDENTS IN OPPOSITION

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On Petition For Writ Of Certiorari To The Supreme Court Of Illinois

BRIEF OF RESPONDENTS IN OPPOSITION

Respondents Korshak and Marcin respectfully pray that this Honorable Court deny petitioner's request that a writ of certiorari issue in this case.

QUESTION PRESENTED

Whether a 1974 amendment to the City of Chicago motor vehicle tax ordinance which permitted a 50% fee reduction to persons 65 years of age or older who owned vehicles of less than 55 horsepower is unconstitutional where the exemptions were based upon reasonable classifications and where the amendment is no longer in effect.

STATEMENT OF THE CASE

On December 16, 1974, plaintiff, a 67 year old person who owned a 1967 Cadillac, filed a suit in the Circuit Court of Cook County, Illinois, seeking declaratory and injunctive relief against the November 20, 1974 amendment to the City of Chicago motor vehicle tax ordinance. (Petition, p. 3) That amendment reduced by 50% the annual motor vehicle tax for persons 65 years of age or older, providing that the vehicle registered did not exceed 55 horsepower, or was an ambulance or hearse.

Plaintiff's contention that the amendment denied him equal protection guaranteed under the Illinois and United States Constitutions was rejected by the Circuit Court of Cook County, Illinois which dismissed his complaint. On January 20, 1976, after direct appeal to the Illinois Supreme Court, the Supreme Court affirmed the ruling of the lower court.

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On December 9, 1975, prior to the Supreme Court's ruling, plaintiff filed additional authority with the court notifying it that on November 26, 1975, the City Council of the City of Chicago had amended the motor vehicle tax ordinance and had provided fee reductions for all persons 65 years of age or older regardless of the vehicle registered.

REASONS FOR DENYING THE WRIT

1. This petition presents no issue for this Court to review because the opinion of the Illinois Supreme Court properly follows the decisions of this Court.

2. This petition presents no issue of importance for this Court to decide because the declaratory and injunctive relief sought by plaintiff is unnecessary, in addition to being unwarranted, in light of the November 26, 1975 amendment by the City of Chicago which eliminates the alleged unconstitutional classification.

ARGUMENT

I.

The Amendment To The City Of Chicago Motor Vehicle Tax Ordinance Met The Test Of Reasonableness Which This Court Requires And Thus Is Not A Violation Of The Equal Protection Clause.

Certiorari should be denied in the instant case for the reason that, as the Illinois Supreme Court held below, petitioner has not established that the exemptions in the 1974 Chicago motor vehicle tax ordinance violate the equal protection clause of the United States Constitution. Under the principles set forth by this Court, taxing ordinances or statutes which treat one class of individuals differently than others do not violate the equal protection clause so long as a reasonable basis for the classification exists. *Lehnhausen v. Lake Shore Auto Parts Co.*, 419 U.S. 356, 35 L.Ed. 2d 351, 93 S.Ct. 1001 (1973). Applying this test, the Circuit Court of Cook County, Illinois, and the Illinois Supreme Court found that there was a reasonable basis for the challenged exemption of the Chicago motor vehicle tax ordinance. The Illinois Supreme Court specifically found that:

> [t]he considerations advanced by defendant to support the reasonableness of the exemption are, first, that persons of the age of 65 years and older who are able to afford to operate vehicles with larger horsepower engines are less in need of tax relief than others, and second, that motor vehicles of 55 or more horsepower create greater environmental problems than do lower horsepower vehicles. These can not be said to be unreasonable considerations, and in our opinion they justify the exemption granted by the ordinance." 62 Ill. 2d at 229, 230.

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This finding of reasonableness fully rebuts any constitutional infirmity in the ordinance, and for this reason certiorari should be denied.

Petitioner interprets the decisions of this Court in *Hendrick v. Maryland*, 235 U.S. 610 (1915), and *Bode v. Barrett*, 344 U.S. 583 (1952), as holding that motor vehicle taxes must be based upon a "nexus" between the tax and the relative damage and destruction done to the highways by a particular automobile. Petitioner states that any motor vehicle tax that is not based on this "nexus" is *prima facie* unreasonable. While the taxation schemes upheld by this Court in *Hendrick v. Maryland* and *Bode v. Barrett* did involve taxation based on road use, this Court has never stated that a nexus between road use and amount of the tax is constitutionally required. Indeed such a position was rejected by the Illinois Supreme Court in *Bode v. Barrett*, 412 Ill. 204 (1952) aff'd. 344 U.S. 583, where the court stated:

> "Since the formula used in imposing the tax is not a measure of constitutionality so long as it may be deemed a reasonable exercise of legislative judgment, it is not required that motor vehicle laws necessarily be framed on the basis of mileage taxes, and numerous cases have so held. [Citations omitted.] So long as the tax imposed returns not in excess of a fair and reasonable compensation for the privilege of using the State roads, the tax may be imposed as a flat license fee, as an inspection fee, or may be a tax measured by weight or load capacity, by mileage, by weight and mileage, by value of vehicle, or by fuel purchased or consumed." 412 Ill. at 223, 224.

Other Illinois cases have similarly recognized that numerous other methods of classifying vehicles for taxing purposes are proper and constitutional. The classifications of the Chicago motor vehicle tax were

first upheld in *Harders Storage Co. v. Chicago*, 235 Ill. 58 (1808). In the *Harders* case, the tax was based on the size and number of horses used to pull wagons. In *Melton v. City of Paris*, 333 Ill. 190 (1928) the court upheld a vehicle tax which divided all vehicles into 15 classes of which motor vehicles consisted nine classes. The court in *Melton* did not discuss road use as a basis for any of the classifications.

The petitioner's contentions of a denial of equal protection cannot withstand critical analysis. The Illinois Supreme Court correctly followed the test of reasonableness as stated by this Court in the *Lehnhausen* case. There is no purpose to be served by the issuance of certiorari in this action.

II.

The Injunctive And Declaratory Relief Sought By Plaintiff Is Now Unnecessary In Light Of The Recent Amendment To The Motor Vehicle Tax Ordinance.

Plaintiff requests this Court to declare the 1974 amendment invalid. Plaintiff asks for this relief, even though the amendment is no longer in effect. Moreover, the relief plaintiff requested in the Illinois courts, to enjoin the enforcement of the reduction given to persons 65 years of age or older, would have required all persons to pay full fees and would provide no relief for the elderly citizens of the City of Chicago.

The 1975 amendment to the motor vehicle tax ordinance presently in effect allows a 50% tax reduction to *all* persons 65 years of age or older. Under these circumstances plaintiff is now entitled to a tax reduction

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which he would not have received even if he had prevailed on the merits of his suit. Thus this petition presents no controversy which this Court should be called upon to resolve.

CONCLUSION

For these reasons, therefore, it is respectfully submitted that the Petition For A Writ of Certiorari be denied.

Respectfully submitted,

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